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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yuba)

THE PEOPLE,

Plaintiff and Respondent,

v.

PATRICK ALAN ROBINSON,

Defendant and Appellant.

C049119

(Super. Ct. No. CRF04638)

Defendant Patrick Alan Robinson pled guilty to two counts of a lewd or lascivious act upon a child under the age of 14 years. The trial court sentenced defendant to state prison for an aggregate term of 10 years and imposed a sex offender fine of \$500, that is, \$200 for the first count and \$300 for the second count.

Defendant appeals, contending the trial court erroneously imposed the \$300 sex offender fine for the second count. We reject defendant's contention and will modify the judgment to provide for mandatory penalty assessments upon the sex offender fines imposed.

DISCUSSION

In view of defendant's sole contention, a recitation of the facts is unnecessary. Penal Code¹ section 290.3, subdivision (a), provides in pertinent part: "Every person who is convicted of any offense specified in subdivision (a) of Section 290 shall, in addition to any imprisonment or fine, or both, imposed for violation of the underlying offense, be punished by a fine of two hundred dollars (\$200) upon the first conviction or a fine of three hundred dollars (\$300) upon the second and each subsequent conviction, unless the court determines that the defendant does not have the ability to pay the fine."

The People argue defendant's failure to object to imposition of a section 290.3, subdivision (a) fine at sentencing "waives" the issue on appeal. (*People v. McMahan* (1992) 3 Cal.App.4th 740, 750; see *People v. Scott* (1994) 9 Cal.4th 331, 353-354.)

Defendant claims the section 290.3, subdivision (a) fine on the second count was unauthorized, a contention which may be raised for the first time on appeal.

In *Scott*, the Supreme Court explained: "[A] sentence is generally 'unauthorized' where it could not lawfully be imposed under any circumstance in the particular case. Appellate courts are willing to intervene in the first instance because such error is 'clear and correctable' independent of any factual

¹ All further statutory references are to the Penal Code unless otherwise indicated.

issues presented by the record at sentencing. [Citation.]”
(*People v. Scott*, *supra*, 9 Cal.4th at p. 354.)

Regardless of whether the contention is forfeited, the trial court properly imposed the second sex offender fine. As defendant acknowledges, the same contention was rejected in *People v. O’Neal* (2004) 122 Cal.App.4th 817.

The two counts alleging a violation of section 288, subdivision (a) to which defendant pled were charged in the same case. Each count constitutes a separate conviction for purposes of section 290.3, subdivision (a). Had the Legislature intended section 290.3 to include a requirement that each count be brought and tried separately, it would have said so. (*People v. Fuhrman* (1997) 16 Cal.4th 930, 939; *People v. O’Neal*, *supra*, 122 Cal.App.4th at p. 822; *People v. Allison* (1995) 41 Cal.App.4th 841, 844-845; compare § 667, subd. (a).) Moreover, a contrary interpretation would base “fines on the prosecutor’s procedural choice [whether to bring separate actions], not the number of convictions.” (*O’Neal*, at p. 822.)

The People assert the sex offender fines are subject to state and county penalty assessments (Pen. Code, § 1464; Gov. Code, § 76000) which are mandatory and the trial court’s failure to impose these assessments constitutes an error which may be raised for the first time on appeal. (*People v. Talibdeen* (2002) 27 Cal.4th 1151, 1157; *People v. Stewart* (2004) 117 Cal.App.4th 907, 910.) We will order the judgment modified to provide for these assessments.

DISPOSITION

The judgment is modified to provide for a \$200 state and a \$140 county penalty assessment on the \$200 sex offender fine for the first count and a \$300 state and a \$210 county penalty assessment on the \$300 sex offender fine for the second count. The trial court is directed to prepare an amended abstract of judgment and to forward a certified copy to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.

ROBIE, J.

We concur:

MORRISON, Acting P.J.

BUTZ, J.